

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

|                                |   |                      |
|--------------------------------|---|----------------------|
| <b>IRMA RODRIGUEZ</b>          | ) |                      |
| Claimant                       | ) |                      |
| VS.                            | ) |                      |
|                                | ) | Docket No. 1,014,237 |
| <b>TYSON FRESH MEATS, INC.</b> | ) |                      |
| Self-Insured Respondent        | ) |                      |

**ORDER**

Claimant appealed the August 23, 2005, Order Denying Medical Treatment entered by Administrative Law Judge Brad E. Avery.

**ISSUES**

Claimant fell on July 22, 2003, while working for respondent. And claimant alleges she injured her right knee, right hip, and low back as a result of that accident.

At an August 19, 2005, preliminary hearing, Judge Avery described the issue in this claim, as follows:

Judge Avery: Okay, counsel, we've had discussions off the record. Claimant is seeking medical treatment with Doctor Do, D-O. The -- she suffered an alleged compensable injury at one time. Is that correct?

Mr. Worth: Yes, there was a slip and fall accident suffered on July 22 of 2003.

Judge Avery: Okay. As we just discussed claimant has suffered a compensable injury. Respondent is -- and claimant's counsel is seeking additional medical treatment. However, it's the respondent's position that the claimant is at maximum medical improvement and any additional treatment she seeks is not related to the original work related injury. Okay, with that claimant may call her first witness.<sup>1</sup>

Following the preliminary hearing, Judge Avery denied claimant's request for additional medical treatment. The August 23, 2005, Order Denying Medical Treatment entered by Judge Avery sets forth one finding -- "Condition not work related."

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<sup>1</sup> P.H. Trans. at 3-4.

Claimant contends Judge Avery erred. Claimant argues the Judge exceeded his authority by denying her request for medical treatment as the medical records admitted at the preliminary hearing from three different physicians allegedly establish that claimant has right hip, low back and right knee pain. Claimant does not state what specific relief she is seeking from this appeal. But the Board assumes she desires the Board to reverse the August 23, 2005, Order.

Respondent argues that claimant has failed to make a concise statement of the issue raised on this appeal but contends the Board does not have jurisdiction to review the August 23, 2005, Order if the issue is whether the Judge exceeded his authority by denying the request for additional medical benefits. Accordingly, respondent argues the Board should dismiss this appeal. In the alternative, respondent argues the medical reports of Dr. Mary Ann Hoffmann establish that claimant's low back and leg symptoms are not related to her July 2003 accident and, therefore, the August 23, 2005, Order should be affirmed.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction at this juncture of the claim to review the findings from the August 23, 2005, preliminary hearing Order?
2. Did claimant prove her present symptoms for which she seeks medical benefits are related to her July 22, 2003, fall at work?

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

On July 22, 2003, claimant fell and injured her right knee while working for respondent. As a result of that accident, claimant underwent right knee surgery. Following the accident, claimant gradually developed symptoms in her low back and right hip. But the only medical treatment that claimant received for those symptoms was the treatment that she obtained on her own. Claimant also has developed left ankle pain, which she attributes to shifting her weight to her left leg to compensate for the right leg, which she says is numb and weak.

At the August 2005 preliminary hearing, claimant requested the Judge to permit her to see a doctor in El Dorado, Kansas, for authorized medical treatment for her back, right hip, right leg, and left ankle. Claimant, who required an interpreter, could not pronounce the name of the doctor whom she desired to consult. But at the hearing claimant introduced the December 8 and December 20, 2004, office notes from Dr. Duane K. Nelson, who is an orthopedic surgeon with offices in both Wichita and El Dorado, Kansas.

The December 8, 2004, notes from Dr. Nelson contain a history that claimant fell at work on July 22, 2003, and that she hurt her right knee; that she underwent right knee arthroscopic surgery in 2003, which helped for a while; and that her pain returned with pain in her entire right lower extremity and in her low back. The doctor indicated the etiology of claimant's low back pain and right knee pain was unknown. And the December 20, 2004, notes from Dr. Nelson indicate that claimant was experiencing pain in both the posterior and medial aspects of her right knee, pain in the posterior aspect of her right calf, and low back pain. The doctor noted under his impressions that the posterior knee and calf pain "could be an S1 radiculopathy due to the degenerative disk at L5-S1"<sup>2</sup> or from something going on in the medial compartment of her knee. Accordingly, Dr. Nelson recommended a lumbar epidural steroid injection for the degenerative L5-S1 disk and probable right S1 sciatic radiculopathy.

Respondent also introduced several medical reports at the preliminary hearing. Dr. Jeffrey T. MacMillan saw claimant on September 19, 2003, and issued a report of the same date that indicates claimant was experiencing and reporting some right low back and buttock discomfort, which she related to walking with a limp. In addition, claimant also reported to the doctor that her major complaint was medial knee joint pain with some pulling in her right calf. Dr. MacMillan diagnosed a torn right medial meniscus and recommended arthroscopic debridement, which the doctor performed in October 2003.

At a late October 2003 follow-up visit, claimant told Dr. MacMillan she had severe right flank pain for about a week. And in November 2003 claimant told the doctor she had pain from her mid thigh to her mid right leg with intermittent swelling and a painful mass in the posterior aspect of her knee. The doctor last saw claimant in mid-December 2003 at which time claimant complained of a variety of right knee and right lower extremity symptoms.

Respondent also introduced two letters from Dr. Mary Ann Hoffmann to Judge Avery. The first letter, which is dated November 12, 2004, indicates the doctor examined claimant two days earlier at which time she was complaining of numbness in her right lower leg; locking, swelling, and painful popping in the right knee; right knee weakness; constant back pain; and pain in both legs after standing five to six hours. According to the November 2004 letter, Dr. Hoffmann concluded claimant would benefit from a generalized cardiac conditioning program, along with stretching exercises and strengthening exercises for both the right knee and her back. Regarding claimant's back pain, the doctor suspected it resulted from claimant's altered gait. Interestingly, on page 4 of her letter Dr. Hoffmann gratuitously offered the legal conclusion that claimant's back problems were not "compensable."

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<sup>2</sup> P.H. Trans., Cl. Ex. 1.

There is nothing in any of the studies to indicate that she has a pinched nerve in her back, and I suspect her back pain is probably as the result of her altered gait pattern and is muscular in nature and is not compensable.<sup>3</sup>

Dr. Hoffmann wrote Judge Avery a second time after seeing claimant on June 3, 2005. In addition to the symptoms that claimant described at their first visit, claimant advised the doctor that she had begun having swelling in her left leg and ankle because of standing all day. In her June 6, 2005, letter to the Judge, the doctor indicated claimant's leg aching and swelling was probably due to venous insufficiency, which the doctor stated was not work-related. The doctor also noted claimant was hunched over and walked with a significant limp and that claimant's lower lumbar spine and right buttock over the greater trochanter and down her lateral thigh on the right side was tender to palpation. This time Dr. Hoffmann indicated physical therapy might improve the range of motion in claimant's hip and that claimant might also benefit from work hardening and a cardiac fitness program.

Because this is an appeal from a preliminary hearing order, not every alleged error is subject to review. For example, the Board does not have the authority in an appeal of a preliminary hearing order to reweigh the evidence to determine whether an injury requires additional medical treatment. But this Board does have the jurisdiction to review a preliminary hearing finding whether an alleged condition or alleged injury was caused by an accident that arose out of and in the course of employment or whether requested medical benefits are related to injuries that were sustained in an accident that is compensable under the Kansas Workers Compensation Act.<sup>4</sup>

Claimant is correct that Judge Avery's finding that claimant's "[c]ondition [is] not work related" lacks clarity as it fails to specify which condition the Judge is referring to. But, on the other hand, claimant has failed to establish which condition presently requires medical treatment. Although one might assume claimant is requesting the lumbar epidural steroid injections recommended by Dr. Nelson in December 2004, the medical reports admitted into the preliminary hearing record indicate claimant received three epidural blocks sometime between claimant's visits with Dr. Hoffmann in November 2004 and June 2005.

The Board concludes claimant has failed to establish that the medical benefits being requested are related to injuries arising from her July 2003 accident at work. Accordingly, claimant's request for additional medical benefits should be denied and the August 23, 2005, Order Denying Medical Treatment should be affirmed.

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<sup>3</sup> *Id.*, Resp. Ex. C.

<sup>4</sup> See K.S.A. 44-534a.

As provided by the Kansas Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.<sup>5</sup>

**WHEREFORE**, the Board affirms the August 23, 2005, Order Denying Medical Treatment entered by Judge Avery.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 2005.

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BOARD MEMBER

c: Diane F. Barger, Attorney for Claimant  
Gregory D. Worth, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director

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<sup>5</sup> K.S.A. 44-534a(a)(2).